

ORIGINAL

Attorney or Party Name, Address, Telephone and Fax Number, and CA State Bar No.

FOR COURT USE ONLY

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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA**

In re:  
**DAVID SAMUEL ASCHER,**

Debtor.

CASE NO.: **6:09-bk-22724 MJ**  
Chapter 7

**NOTICE OF SALE OF ESTATE PROPERTY**

Sale Date: **December 8, 2009**

Time: **10:00 A.M.**

Location: **Courtroom 302 of the United States Bankruptcy Court  
3420 Twelfth Street, Riverside, California 92501**

Type of Sale: ☒ Public

☐ Private

Last date to file objections:

**November 24, 2009 –  
(14 days prior to the hearing)**

Description of Property to be Sold: **The Estate's interest in LHVIM and/or LHV, Ltd., a California corporation - see the attached Notice of Hearing on Chapter 7 Trustee's Motion for Order: (1) Approving the Sale of Certain Assets of the Estate, Subject to Overbid Procedures, Including a Breakup Fee, and Request for Approval of the Bidding Procedures Utilized; and (2) Granting Related Relief ("Notice")**

Terms and Conditions of Sale: **See the attached Notice**

Proposed Sale Price: **See the attached Notice**

Overbid Procedure (If Any): **See the attached Notice**

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

**December 8, 2009 at 10:00 A.M., in Courtroom 302, 3420 Twelfth Street, Riverside, California 92501**

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

**Melissa R. Davis, Esq.**  
**Shulman Hodges & Bastian LLP**  
**26632 Towne Centre Drive, Suite 300, Foothill Ranch, CA 92610**  
**Telephone: (949) 340-3400; Facsimile: (949) 340-3000**

Date: **November 17, 2009**

COPY

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Attorneys for Karl T. Anderson, the Chapter 7 Bankruptcy Trustee

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**

In re

**DAVID SAMUEL ASCHER,**

Debtor.

Case No. 6:09-bk-22724-MJ

Chapter 7

**NOTICE OF HEARING ON CHAPTER 7  
TRUSTEE'S MOTION FOR ORDER:**

**(1) APPROVING THE SALE OF CERTAIN  
ASSETS OF THE ESTATE, SUBJECT TO  
OVERBID PROCEDURES, INCLUDING  
A BREAKUP FEE, AND REQUEST FOR  
APPROVAL OF THE BIDDING  
PROCEDURES UTILIZED; AND**

**(2) GRANTING RELATED RELIEF**

Date: December 8, 2009

Time: 10:00 a.m.

Place: Courtroom 302  
3420 Twelfth Street  
Riverside, CA 92501

**NOTICE IS HEREBY GIVEN THAT** that on **December 8, 2009 at 10:00 A.M.**, in Courtroom 302 of the above-entitled Court located at 3420 Twelfth Street, Riverside, California 92501 Karl T. Anderson, Chapter 7 Trustee ("Trustee" or "Seller") for the bankruptcy estate ("Estate") of David Samuel Ascher ("Debtor") will bring a Motion for Order: (1) Approving the Sale of Certain Assets of the Estate, Subject to Overbid Procedures, Including a Breakup Fee, and Request for Approval of the Bidding Procedures Utilized; and (2) Granting Related Relief ("Sale Motion").

As set forth below, the Trustee has received an offer from Linda Andrews ("Buyer") to purchase the Estate's approximate 18% interest in the stock of LHVIM and/or LHV, Ltd. and/or

1 L.H.V., Ltd., a California corporation ("LHV"), pursuant to the terms and conditions of a certain  
2 Purchase and Sale Agreement ("Agreement"). The sale is in the form of a credit-bid whereby  
3 the sale to the Buyer will result in the decrease of her secured claim by the sum of \$200,000 and  
4 will be subject to overbid procedures as set forth below, including a Break-up Fee of \$16,000.  
5 Good cause exists to grant the Sale Motion so that the Trustee does not lose this favorable  
6 business opportunity.

7 By the Sale Motion the Trustee requests that the Court enter an order as follows: (1)  
8 Authorizing the Trustee to sell LHV to the Buyer pursuant to the terms and conditions as set  
9 forth in the Agreement and to comply in all respects with the terms of the Agreement; (2)  
10 approving the Bidding Procedures set forth below; (3) approving the proposed Break-up Fee; (4)  
11 authorizing the Trustee to sign any and all documents convenient and necessary in pursuit of the  
12 sale as set forth above, including but not limited to the Agreement; (5) finding that the Trustee  
13 holds good and marketable title to LHV; (6) finding that the Purchase Price constitutes fair  
14 market value for LHV; (7) finding that notice of the transactions contemplated hereby and of the  
15 terms of the Agreement was good and sufficient and was provided timely to all creditors and  
16 parties in interest, including, without limitation, any and all creditors holding liens or  
17 encumbrances on LHV; (8) waiving the ten day stay of order provided in Federal Rule of  
18 Bankruptcy Procedure 6004(h); (9) and for such other and further relief as is just and proper.  
19 Following is a summary of the Sale Motion

20 **A. Commencement of the Bankruptcy Case and Appointment of the Trustee**

21 On June 10, 2009, the Debtor filed a voluntary bankruptcy petition under Chapter 7 of the  
22 Bankruptcy Code.

23 Karl T. Anderson is the duly qualified, acting and appointed Chapter 7 trustee of  
24 the Debtor's bankruptcy estate.

25 **B. Background Information Regarding the Assets to be Sold and the Buyer**

26 The Debtor's Bankruptcy Schedule B lists an 18% interest in LHVIM, a California  
27 subchapter S corporation and lists the value as unknown. The Trustee believes the Debtor's  
28 reference to "LHVIM" refers to LHV, Ltd., a California corporation. Also, the Buyer believes  
that the Debtor owns at least a 25% in LHV. To be clear, the Trustee is selling whatever  
percentage interest the Debtor and hence, the bankruptcy estate, owns in LHV. LHV is a  
privately held company and the interest to be sold is a minority interest.

Debtor's Bankruptcy Schedule D lists no secured claims. In the Debtor's bankruptcy  
schedules, Buyer is listed as a general unsecured creditor in the amount of \$255,257. Buyer has  
submitted documentation to the Trustee evidence her secured claim in the amount of  
approximately \$271,000. Buyer is secured by the Debtor's personal property, including his  
interest in LHV as well as his rights as a beneficiary of the Delores Ascher Survivor's  
Administrative Trust which created the David Ascher Charitable Remainder Unit Trust  
("CRUT"). Buyer is also secured by a real property located at 5337 Village Way, Oceanside,  
California ("Oceanside Property") pursuant to a recorded abstract of judgment.

The Trustee does not have much information on LHV, but he has requested  
documentation from the Debtor, the Debtor's siblings, and LHV's accountant. The Trustee is  
informed that LHV owns at least one real property, but the Trustee has not been able to verify  
such information.

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**C. The Purchase Offer**

The Trustee has received an offer from the Buyer to purchase the Estate's interest in LHV pursuant to the terms and conditions of the Agreement. The principal terms of the Agreement are as follows:

- Purchase Price. The total purchase price shall be the satisfaction of Two Hundred Thousand Dollars (\$200,000) of the Buyer's secured claim ("Purchase Price").

- Allowed Claim. The Buyer shall have an allowed secured claim in the amount of \$271,271.34 plus interest at a rate of 10% per annum plus reasonable attorneys fees and costs to the extent allowed by Bankruptcy Code § 506(b) and subject to Bankruptcy Court approval ("Allowed Claim"), secured by the Debtor's interest in the Oceanside Property, distributions of income from the CRUT, and LHV. If the sale is approved, the Buyer's Allowed Claim shall be reduced by \$200,000 at the closing.

- Due Diligence. Buyer shall be allowed a 90 day due diligence period to review documents relating to the purchase of LHV. Buyer may cancel the Agreement for any reason at any time during the due diligence period. During the due diligence period, Buyer shall review and approve of: (1) the corporate documents of LHV, including its articles of incorporation, stock register and share certificates; (2) the financial statements of LHV; and (3) LHV's property and existing leases and secured indebtedness.

- Subject to Court Approval. The Agreement is expressly contingent upon the Trustee obtaining Bankruptcy Court approval of the sale of LHV in the Debtor's bankruptcy case.

- Overbid Procedures and Break-up Fee. Any initial overbid for LHV shall be in the amount of \$225,000 with subsequent overbids in increments of \$10,000. In the event of a successful overbid, whether an initial overbid or a subsequent overbid, Buyer shall be paid a break-up fee of 8% of the Purchase Price equal to \$16,000 ("Break-up Fee"), which is to reimburse the Buyer for her attorneys' fees and costs incurred in conducting her due diligence, negotiating the Agreement, appearing at the hearing on this Motion, and reviewing the moving papers (and any opposition and reply thereto). The Break-up Fee shall not be applied to Buyer's Allowed Claim. In the event a successful overbid is received and the transaction closes, the Buyer shall still be entitled to the treatment of her Allowed Claim. In the event a successful overbid is received and the transaction closes, Buyer shall be paid the sum of \$200,000 out of the proceeds of such sale to be applied to the Buyer's Allowed Claim in addition to the Break-up Fee. If the Court approves the sale of LHV to a person or entity other than the Buyer, the Buyer's Allowed Claim shall continue to be treated as a first priority secured claim on LHV, the Oceanside Property, and the CRUT.

- Acknowledgment of the Trustee's Capacity: The Purchaser is expressly aware and fully informed that the Trustee is selling LHV exclusively in his capacity as the Chapter 7 Trustee of the Estate. No personal liability for costs, fees or other charges on the Trustee's part is intended; any liability is strictly the liability of the Estate. In the event that the Trustee fails or refuses to complete the transaction for any reason, then the limit of the Trustee's liability is only to immediately upon demand return any money paid to the Trustee by the Buyer, without deduction. All other liability of the Trustee, or his agents or attorneys, is hereby released.

- Attorney's Fees. If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of any of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled. Through the sale of LHV, the Trustee anticipates satisfying approximately 75% of the only secured creditor's claim in the Estate.

1 **D. Estimated Net Sale Proceeds**

2 There is no broker or other commission to be paid through the sale. As such, through the  
3 proposed sale, the Trustee anticipates partially satisfying the Buyer's secured claim by \$200,000.

4 **E. The Proposed Sale Serves the Best Interest of the Estate and its Creditors**

5 The Trustee believes that the proposed purchase price consideration to be paid to the  
6 Estate is fair and the sale serves the best interest of the Estate and its creditors based on the  
7 following:

8 • Through the sale of LHV, the Trustee anticipates generating funds to  
9 satisfy approximately 75% of the only secured creditor's claim in the Estate. This will in turn  
10 provide a greater distribution to unsecured creditors when the Trustee obtains funds to distribute.

11 • If the Sale Motion is not approved, a valuable asset of the Estate will be  
12 lost. Through this Sale Motion, the Trustee will preserve a benefit for creditors which will be  
13 lost if the Sale Motion is not granted.

14 • Finally, the Trustee believes no other parties have interest or would pay  
15 more than offered by Buyer for LHV.

16 Thus, good cause exists to grant the Sale Motion so that the Trustee does not lose this  
17 favorable business opportunity.

18 **F. NOTICE OF OVERBID PROCEDURES AND BREAK-UP FEE**

19 The Trustee has determined that it would benefit the Estate by permitting all interested  
20 parties to receive information and bid for LHV. Accordingly, in order to obtain the highest and  
21 best offer for the benefit of the creditors of the Estate, the following overbid procedures  
22 ("Bidding Procedures") shall be used:

23 1. The potential overbidders must bid an initial amount of at least \$225,000.

24 2. Minimum bid increments thereafter shall be \$10,000.

25 3. Overbids must be in writing and be received by the Trustee and the Trustee's  
26 counsel, Shulman Hodges & Bastian LLP to the attention of Leonard M. Shulman, by no later  
27 than 5:00 p.m. on December 6, 2009.

28 4. The overbidder must seek to acquire LHV on terms and conditions not less  
favorable to the Debtor's Estate than the terms and conditions to which the Buyer has agreed to  
purchase LHV.

5. If overbids are timely received, the final bidding round shall be held concurrent  
with the hearing on this Motion, in order to allow all potential bidders the opportunity to overbid  
and purchase LHV.

6. At the hearing on this Motion, the Trustee and his counsel shall review each  
overbid and identify the highest and best offer for LHV received and seek Court approval of the  
sale of LHV to the successful bidder ("Successful Bidder").

7. In the event Successful Bidder fails to close on the sale of LHV within the time  
parameters approved by this Court, the Trustee will be released from his obligation to sell LHV  
to the Successful Bidder and the Trustee may then sell LHV to the first back-up bidder approved  
by this Court at the hearing on this Motion ("First Back-Up Bidder").

8. In the event of a successful overbid, whether an initial overbid or a subsequent overbid, Buyer shall be paid a break-up fee of \$16,000. The Break-up Fee shall not be applied to Buyer's Allowed Claim.

The foregoing Bidding Procedures will provide for an orderly completion of the sale of LHV and ensures that potential overbidders are provided with full disclosure as to the Bidding Procedures and the specific stock to be sold. By having all bidders compete on similar terms, the interested parties and the Court may compare competing bids in order to realize the highest benefit for the Estate. Thus, the Trustee is requesting that the Court approve the Bidding Procedures as a fair and reasonable method of realizing the highest and best price for LHV for the benefit of the Estate and its creditors.

For further information please see the **CHAPTER 7 TRUSTEE'S MOTION FOR ORDER: (1) APPROVING THE SALE OF CERTAIN ASSETS OF THE ESTATE, SUBJECT TO OVERBID PROCEDURES, INCLUDING A BREAKUP FEE, AND REQUEST FOR APPROVAL OF THE BIDDING PROCEDURES UTILIZED; AND (2) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF KARL T. ANDERSON IN SUPPORT** on file with the Clerk of the above-entitled Court which may be reviewed on Monday through Friday from 9:00 A.M. to 4:00 P.M. A copy of the Motion may be obtained by written request to the Trustee's attorney at the address indicated above.

**PLEASE TAKE FURTHER NOTICE** that any opposition or other responsive paper to the sale Motion must be filed with the Clerk of the above-entitled Court and a copy served on Shulman Hodges & Bastian LLP to the attention of Melissa R. Davis at the address indicated above and the Office of the United States Trustee, 3685 Main Street, Suite 300, Riverside, California 92501 at least fourteen days prior to the hearing in the form required by **Local Bankruptcy Rule 9013-1(f)**.

**PLEASE TAKE FURTHER NOTICE** that failure to file a timely response may be deemed as consent to the relief requested in the Sale Motion. **SEE, LOCAL BANKRUPTCY RULE 9013-1(h)**.

Dated: November 17, 2009

Respectfully submitted,

**SHULMAN HODGES & BASTIAN LLP**

/s/ Melissa R. Davis

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Leonard M. Shulman

Melissa R. Davis

Attorneys for Chapter 7 Trustee